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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,945	10/04/2001	J. Christopher Flaherty	59249-024 (INSL-113)	3499

7590 04/08/2003

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EXAMINER

DESAUTO, MATTHEW F

ART UNIT PAPER NUMBER

3763

DATE MAILED: 04/08/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/970,945	FLAHERTY ET AL. <i>CR</i>
	Examiner	Art Unit
	Matthew F DeSanto	3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 March 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7, 33-36, 48-59 and 67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7, 33-36, 48-59, 67 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s),

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2-8</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Species B in Paper No. 10 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claims 8-32, 37-47, 60-66, 68-72 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 10.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-7, 48-59 and 67 are rejected under 35 U.S.C. 102(e) as being anticipated by Kriesel et al. (USPN 6527744).

Kriesel et al. discloses a system for delivering fluid comprising a fluid delivery device, an exit port, a dispenser, a local processor and a local communication element, as well as a remote control device separate from the fluid delivery device, and at least

one date collection assembly adapted to measure, monitor, calculate, and store a physiologic parameter of a patient. (Entire reference)

As to claims 2-7, wherein the date collection assembly includes a sensor to measure blood glucose for blood. (Column 14, lines 1-15)

As to claims 55-59, wherein the local processor of the fluid delivery device is programmed to provide flow information, the local communication unit includes a wireless transmitter for transmitting the flow information from the local processor, the remote control device includes a remote receiver for receiving the flow information from the local transmitter, and the user interface components of the remote control device include output components connected to the remote processor for allowing a user to receive the flow information. (Column 13, line 25 – Column 14, line 14 and entire reference)

5. Claims 1-7, 33-36, 55-59 are rejected under 35 U.S.C. 102(e) as being anticipated by Lebel et al. (USPub 2002/0065454).

Lebel et al. discloses a system for delivering fluid comprising a fluid delivery device, an exit port, a dispenser, a local processor and a local communication element, as well as a remote control device separate from the fluid delivery device, and at least one date collection assembly adapted to measure, monitor, calculate, and store a physiologic parameter of a patient. (Entire reference)

As to claims 2-7, wherein the date collection assembly includes a sensor to measure blood glucose for blood. (Para. [0360], [0421])

As to claims 33-36, wherein the data collection assembly is adapted to be worn on an arm of the patient, and wherein the exit port assembly includes a transcutaneous access tool, which is a needle. (Entire reference)

As to claims 55-59, wherein the local processor of the fluid delivery device is programmed to provide flow information, the local communication unit includes a wireless transmitter for transmitting the flow information from the local processor, the remote control device includes a remote receiver for receiving the flow information from the local transmitter, and the user interface components of the remote control device include output components connected to the remote processor for allowing a user to receive the flow information. (Entire reference)

6. Claims 1-7, 33-36, 48-59, 67 are rejected under 35 U.S.C. 102(e) as being anticipated by Gonnelli et al. (USPub 2002/0169416).

Gonnelli et al. discloses a system for delivering fluid comprising a fluid delivery device, an exit port, a dispenser, a local processor and a local communication element, as well as a remote control device separate from the fluid delivery device, and at least one date collection assembly adapted to measure, monitor, calculate, and store a physiologic parameter of a patient. (Entire reference)

As to claims 2-7, wherein the date collection assembly includes a sensor to measure blood glucose for blood. (Para [0047])

As to claims 33-36, wherein the data collection assembly is adapted to be worn on an arm of the patient, and wherein the exit port assembly includes a transcutaneous access tool, which is a needle. (Entire reference)

As to claims 55-59, wherein the local processor of the fluid delivery device is programmed to provide flow information, the local communication unit includes a wireless transmitter for transmitting the flow information from the local processor, the remote control device includes a remote receiver for receiving the flow information from the local transmitter, and the user interface components of the remote control device include output components connected to the remote processor for allowing a user to receive the flow information. (Entire reference)

7. Claims 1-7, 33-36, 48-50, 55-59 are rejected under 35 U.S.C. 102(e) as being anticipated by Mann et al. (USPub 2002/0107476).

Mann et al. discloses a system for delivering fluid comprising a fluid delivery device, an exit port, a dispenser, a local processor and a local communication element, as well as a remote control device separate from the fluid delivery device, and at least one date collection assembly adapted to measure, monitor, calculate, and store a physiologic parameter of a patient. (Entire reference)

As to claims 2-7, wherein the date collection assembly includes a sensor to measure blood glucose for blood. (Entire reference)

As to claims 33-36, wherein the data collection assembly is adapted to be worn on an arm of the patient, and wherein the exit port assembly includes a transcutaneous access tool, which is a needle. (Entire reference)

As to claims 55-59, wherein the local processor of the fluid delivery device is programmed to provide flow information, the local communication unit includes a wireless transmitter for transmitting the flow information from the local processor, the

remote control device includes a remote receiver for receiving the flow information from the local transmitter, and the user interface components of the remote control device include output components connected to the remote processor for allowing a user to receive the flow information. (Entire reference)

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F DeSanto whose telephone number is 1-703-305-3292. The examiner can normally be reached on Monday-Friday 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 1-703-308-3552. The fax phone numbers for the organization where this application or proceeding is assigned are 1-703-872-9302 for regular communications and 1-703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 1-703-308-0858.

Matthew DeSanto

Matthew DeSanto
Art Unit 3763
April 3, 2003

Brian L. Casler
BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700